IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, PLAINTIFF

v.

LOEW'S, INC., WARNER BROTHERS PICTURES, INC., WARNER BROTHERS PICTURES DISTRIBUTING CORPORATION (FORMERLY KNOWN AS VITAGRAPH, INC.), WARNER BROTHERS CIRCUIT MANAGEMENT CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, NATIONAL THEATRES CORPORATION, DEFENDANTS

Equity No. 87-273

STATEMENT AS TO JURISDICTION

In accordance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court in this cause.

OPINION BELOW

A copy of the unreported opinion of the District Court for the Southern District of New York, together with its findings of fact, conclusions of law and judgment are attached hereto as Appendix A.*

---

* (Clerk's Note. The opinion and decree are printed as appendices to the Statements as to Jurisdiction in the companion cases and are not reprinted here).

JURISDICTION

The judgment of the District Court was entered on February 8, 1950. A petition for appeal is presented to the District Court herewith, to-wit, on April 7th, 1950. The jurisdiction of the Supreme Court to review this decision on direct appeal is conferred by Section 2 of the Expediting Act of February 11, 1903 (32 Stat. 823), as amended by Section 17 of the Act of June 25, 1948 (62 Stat. 869; 15 U.S.C. 29). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *United States* v. *Yellow Cab Company*, 332 U. S. 218; *International Salt Company* v. *United States*, 332 U. S. 392.

QUESTIONS PRESENTED

Whether the decree of the District Court has failed to give appropriate and adequate relief against further violation of the Sherman Act by:

(1) Failing to include in the decree a prohibition against defendants entering into or enforcing an agreement restricting the right of any other exhibitor to acquire a motion picture theatre;

(2) Failing to require the defendants to propose a divorcement plan within 90 days, and to require completion of the divorcement within 18 months after date of entry of judgment;

(3) Failing to prohibit expansion of defendants' theatre holdings until completion of the divorcement and divestiture required by the judgment;

(4) Failing to prevent acquisition of theatres by defendants as replacements in such a way as to preclude acquisitions to the injury of competitors.

---

[1] The questions presented summarize the points raised in the Assignment of Errors, which are also presented.

POOR COPY

BLEED THROUGH

STATUTES INVOLVED

Pertinent portions of Sections 1, 2, and 4 of the Sherman Act (26 Stat. 209; 15 U.S.C. 1, 2, and 4) provide:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: . . . .
>
> Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, ...
>
> Sec. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. . . .

STATEMENT

A civil proceeding was brought by the United States in 1938 against the eight largest producers and distributors of motion pictures. Five of the eight, including the defendant-appellees, also owned large motion picture theatre circuits. The primary relief sought by the Government was divorcement of the defendants' exhibition interests from their distribution and production interests.

On appeal from the judgment entered by the District Court in 1946, the Supreme Court affirmed in part and reversed in part and remanded the case to the District Court to make additional findings and to enter a new judgment in conformity with its opinion (see 334 U. S.

131, 178). The Supreme Court in its opinion indicated that divorcement, and in some instances divestiture, of the defendant-appellees' theatre interests would be an appropriate remedy (334 U. S. 149).

Following further hearings, the District Court rendered an opinion on July 25, 1949, holding, among other things, that the exhibition interests of each of these defendants should be divorced from their production and distribution interests, and holding for further consideration the question of divestiture of specific theatres. Since Paramount and RKO had, prior to this decision, entered into consent decrees providing for such divorcement and otherwise settling all issues in the case as to them, the judgment to be entered to give effect to the Court's decision was not to run against Paramount or RKO.

On February 8, 1950, the District Court entered final judgment against the other three theatre-owning defendants, appellees herein.[2] The judgment enjoins various trade practices, substantially as provided in the judgment previously approved as to these provisions by the Supreme Court. Section IV of the judgment provides for the divorcement of the defendant-appellees' theatre interests. This Section also provides for divestiture of particular theatres, to the extent necessary to terminate local exhibition monopolies or to disgorge the fruits of monopolistic practices or restraints of trade. It is with reference to the terms and omissions of this judgment that the United States has taken this appeal.

All three defendant-appellees were granted by the district court a stay of the provisions of Section IV of

---

[2] The Court on the same day filed its findings of fact and conclusions of law, and entered a separate judgment against the three defendants which have no theatre interests, Columbia, United Artists, and Universal.

this judgment pending the filing of an appeal and application to the Supreme Court for further stay.

THE QUESTIONS ARE SUBSTANTIAL

The precise terms of the decree of the District Court with respect to the three defendant-appellees is of vital importance in effectuating the policies of the Sherman Act as interpreted by the decision of the Supreme Court, in order that the violations of the appellees may be excised and cured and any recurrence completely prevented. The specific provisions of the decree must be measured against the overriding principles established by the Supreme Court to determine whether these provisions will fully achieve the results required. It is the Government's view that certain of the provisions of the decree, and certain omissions from the decree, individually and in the aggregate, afford to the defendant-appellees future opportunity to avoid the prohibitions expressed in the opinion of the Supreme Court, and fail to foreclose the possibility that once again a combination might arise in violation of the Sherman Act. The decree, as it stands, does not achieve the finality and completeness required by the opinion of the Supreme Court and the public interest reflected therein.

1. The judgment should be amended to prohibit the defendant-appellees from "making or enforcing any agreement which restricts the right of any other exhibitor to acquire a motion picture theatre." Such a prohibition is included in the judgment entered in the parallel case of *Schine Theatres* v. *United States* (334 U. S. 110) following remand to the District Court of the United States for the Western District of New York, and in the consent judgments entered against Paramount and RKO in this case. It was proposed by the Government to be included in the judgment against defendant-appellees herein.

Such a provision is important because it has been customary for the defendant-appellees, when acquiring a theatre in violation of the Sherman Act, to secure restrictive covenants limiting the vendor's future acquisition of theatres. In situations where the former owner is barred by such a covenant from regaining his theatre, the divestiture required by the district court's judgment (Section IV, paragraph 2) may be seriously hampered or defeated. Even apart from their possible effect upon required divestitures, the restrictive covenants should be barred because they improperly limit competition with defendant-appellees by removing from the market place persons qualified by past experience and interest in this type of business activity.

2. The time limitations established by the decree for divorcement of each defendant-appellee's exhibition business from its production and distribution business afford an unwarranted opportunity to profit from continued violation of the Sherman Act, and should be appropriately shortened. The schedule proposed by the Government to be included in the judgment (Section V, paragraph 3 of the Government's proposed judgment) provided that each defendant be required to propose a divorcement plan within ninety days after entry of judgment, instead of the six months provided by Paragraph 1, Section IV of the judgment; that the Government would have sixty days, instead of three months, within which to object to such plan; and that the plan must provide for completion of divorcement within eighteen months, instead of three years, after entry of judgment.

Since the defendant-appellees' vertical integration was a major factor in producing the profit which they derived from their illegal conspiracy (334 U. S. 142-144, 151, 152), and since Section V of the decree may be construed as permitting an appellee to prefer its own

theatres with respect to its own pictures during the three years allowed for completing divorcement, it is of vital importance that the divorcement be carried out as promptly as possible in order to avoid what amounts to a period of grace during which defendant-appellees may garner additional illegal profits.

The period of eighteen months from date of judgment, proposed by the Government, within which to complete divorcement is eminently reasonable. The defendant-appellees have had full knowledge of this possible result of the litigation since suit was filed in 1938, and this knowledge acquired certainty at least since the decision of the Supreme Court on May 3, 1948. Since they were so forewarned, appellees have had ample opportunity to consider the problems that would arise from divorcement, and to develop a plan. In addition, they have had the benefit of the precedents of the divorcement provisions of the RKO and Paramount consent judgments. They are thus not in the position of formulating their plans *de novo* from the date of the decree of the District Court.

Nor would such a time limitation cast an undue burden on appellees. Both the Paramount and RKO consent decrees provide for completing divorcement within one year. Paramount completed divorcement within that time, and RKO stipulated with the Government to complete divorcement within an additional six months. Further, as the District Court's opinion states in another connection, "there would seem to be an inherent injustice" in granting appellees a longer period within which to enlarge their illicit profits than the period allowed by the consent decrees binding two of their confederates. Moreover, appellees have been granted a stay of the provisions of Section IV of the judgment pending filing an appeal and application to the Supreme Court for a further stay, and such stay, if continued

until determination of the appeal, will almost certainly operate to extend for a longer period the overly liberal time limitations set forth in paragraph 1 of Section IV.

3. The judgment should absolutely prohibit expansion of a defendant-appellee's theatre holdings until completion of the divorcement and divestiture required by the judgment. Such a provision is a potent incentive to expeditious divorcement and divestiture. The importance of such expedition has already been discussed.

4. Section III, paragraph 6, of the judgment should be revised in order to obviate the possibility that an appellee might discontinue operation of a theatre and acquire a more advantageous theatre to the injury of competitors. Said paragraph 6 bars each defendant (including each company resulting from divorcement) from acquiring an interest in any new theatre without a prior finding by the court that such acquisition will not unduly restrain competition in the exhibition of feature motion pictures. The proviso reads:

> Provided, however, that the acquisition of a theatre as a replacement for a theatre, held or acquired in conformity with this decree, which may be lost through physical destruction, conversion to non-theatrical purposes, disposition (other than the disposition of a theatre in compliance with this decree) or expiration or cancellation of the lease under which such theatre is held, shall not be deemed to be the acquisition of an additional theatre.

While the meaning of this proviso is far from clear, it would seem to permit a defendant voluntarily to discontinue operation of a theatre and to acquire as a replacement, without court permission, a larger or more favorably located theatre in the same city, to the injury of competition among exhibitors. The proviso

POOR COPY

is broader than corresponding provisions of the Paramount and RKO consent decrees, which seem adequate to protect the defendants against loss of theatres which the decrees permit them to retain. These consent decrees prohibit new theatre acquisitions without prior court approval, and except from this requirement:

> (i) As a substantially equivalent replacement for wholly-owned theatres held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes;
>
> (ii) In renewing leases covering any wholly-owned theatre held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease.

We submit that the various deficiencies in the decree to which we have referred present questions of substance. In many civil proceedings under the Sherman Act, the adequacy of the relief granted is of critical and even central importance. In numerous appeals from judgments entered in such cases, the adequacy or appropriateness of the relief granted by the trial court has presented an issue of more general importance, and one which was more sharply disputed, than the question of substantive violation of the statute. *Crescent Amusement Co.* v. *United States,* 323 U. S. 173; *United States* v. *National Lead Co.,* 332 U. S. 319.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

APRIL 5, 1950.

APPENDIX "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Equity No. 87-273

Filed 2/8/50

UNITED STATES OF AMERICA, PLAINTIFF,

against

LOEW'S INCORPORATED, WARNER BROS. PICTURES, INC., WARNER BROS. PICTURES DISTRIBUTING CORPORATION (formerly known as Vitagraph, Inc.), WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, TWENTIETH CENTURY-FOX FILM CORPORATION, NATIONAL THEATRES CORPORATION, COLUMBIA PICTURES CORPORATION, SCREEN GEMS, INC., COLUMBIA PICTURES OF LOUISIANA, INC., UNIVERSAL CORPORATION, UNIVERSAL PICTURES COMPANY, INC., UNIVERSAL FILM EXCHANGES, INC., BIG U FILM EXCHANGE, INC., AND UNITED ARTISTS CORPORATION, DEFENDANTS

FINDINGS OF FACT[3]

This action having been duly tried and the proofs and arguments of the respective parties having been duly heard and considered, this court, having filed its opinions herein dated June 11, 1946, and July 25, 1949, does hereby find and decide as follows:

1. The following are definitions of terms used in these findings and in the judgment to be entered hereon:

Block-booking—The practice of licensing, or offering for license, one feature, or group of features, upon condition that the exhibitor shall also license another feature or group of features released by the distributor during a given period.

Clearance—The period of time, usually stipulated in license contracts, which must elapse be-

[3] Unless otherwise stated these findings show the situation in 1945.

POOR COPY

BLEED THROUGH

between runs of the same feature within a particular area or in specified theatres.

Exchange District—An area in which an office is maintained by a distributor for the purpose of soliciting license agreements for the exhibition of its pictures in theatres situated throughout the territory served by the exchange and for the physical distribution of such films throughout this territory.

Feature—Any motion picture, regardless of topic, the length of the film of which is in excess of 4,000 feet.

Formula Deal—A licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross.

Franchise—A licensing agreement, or series of licensing agreements, entered into as part of the same transaction, in effect for more than one motion picture season and covering the exhibition of features released by one distributor during the entire period of the agreement.

Independent—A producer, distributor, or exhibitor, as the context requires, which is not a defendant in this action or a subsidiary or affiliate of a defendant.

Master Agreement—A licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres, usually comprising a circuit.

Road-show—A public exhibition of a feature in a limited number of theatres, in advance of its general release, at admission prices higher than those customarily charged in first-run theatres in the areas where they are located.

Runs—The successive exhibitions of a feature in a given area, first-run being the first exhibition

in that area, second-run being the next subsequent, and so on, and shall include also successive exhibitions in different theatres even though such theatres may be under a common ownership or management.

Trade-Showing—A private exhibition of a feature prior to its release for public exhibition.

2. Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1501 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

3. Paramount Film Distributing Corporation, a wholly owned subsidiary of Paramount Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1501 Broadway, New York, New York, and is engaged in the distribution branch of the industry.

4. In 1916 or 1917, a group of exhibitors which controlled many of the then best theatres throughout the country organized First National Exhibitors Circuit, Inc. Although this corporation was initially organized to function as a film buying combine, it evolved into a film-producing company first by financing the production of pictures by others for exhibition in the theatres of its members and finally by producing its own motion pictures.

5. The members of the First National group, consisting of many of the most important exhibitors in the United States controlling many of the best theatres, became franchise holders of the distributing company which they formed. They acquired not only the right to exhibit in their own theatres the pictures produced and distributed by First National, but also they each obtained the right to sub-franchise other exhibitors in their respective territories. In a short time there

were some 3,500 franchise holders, representing as many or more theatres.

6. First National soon began to negotiate for the services of well-known stars and directors in the employ of other producers, including Paramount, and the members of First National began to refuse to exhibit Paramount films. Such well-known stars as Mary Pickford and Norma Talmadge went over to the First National Group.

7. Many of the theatres owned by members of First National had, for a long time prior to 1918, exhibited Paramount pictures. The formation and growth of First National gradually cut down the number of Paramount pictures exhibited in the theatres of the First National group. By 1919 Paramount faced a situation where a group of owners of many of the best theatres in the large cities, many of whom had been its customers in the past, had combined together for cooperative buying and had expanded into a strong organization which distributed its own pictures and threatened to supply its members with enough pictures to permit them to operate without using any pictures of other producers, including Paramount.

8. In these circumstances Paramount determined to acquire interests in theatres of its own so that it might assure itself of outlets for Paramount productions. Prior to the fall of 1917 Paramount had no theatre interests. Between 1917 and 1919 it acquired an interest in two theatres in New York City as show windows, to replace the Strand Theatre which had gone over to the First National Group. During that year in conjunction with its representative in the South, it formed Southern Enterprises, Inc., which acquired various theatres in the South. At about the same time Paramount acquired a 50% interest in the Black chain of theatres in New England. Paramount continued to expand its theatre holdings.

9. In January 1932, Paramount went into equity receivership in the United States District Court for the Southern District of New York. It stayed in

equity receivership until March 1933, when it went into voluntary bankruptcy. It remained in bankruptcy until June 1934, when upon passage of Section 77B of the Bankruptcy Law, it petitioned for reorganization. It was finally reorganized under its present name in June 1935. During these years various companies operating theatres in which Paramount was interested were themselves the subject of bankruptcy or receivership proceedings.

10. Some of the theatre interests which Paramount held at the time of the trial of this action had been acquired and were wholly owned by it either directly or indirectly through subsidiary companies prior to bankruptcy and reorganization. In the course of its reorganization, some of its partly owned theatre interests were created, i.e., in some instances the plan of reorganization approved by this court provided for the sale or other disposition by Paramount of a partial interest (sometimes amounting to 50%, sometimes more and sometimes less) in theretofore wholly owned theatre operating companies, or companies holding legal or equitable interests in theatres or theatre operating companies. The result was the creation of many of Paramount's present partly owned theatre interests.

11. In the course of the reorganization proceedings Paramount lost its interests in some theatres and also changed its relationship with respect to interests in some of its theatre operating companies. The effect of these proceedings and the policy of decentralization inaugurated in the course thereof, was that in some instances Paramount disposed of a partial interest in companies theretofore wholly owned.

12. Loew's Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1540 Broadway, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

13. Radio-Keith-Orpheum Corporation is a corporation organized and existing under the laws of the State of Delaware, with principal place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries.

14. RKO Radio Pictures, Inc., a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Delaware with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the production and distribution branch of the industry.

15. Keith-Albee-Orpheum Corporation was a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1270 Sixth Avenue, New York, New York, and was engaged in the business of exhibiting motion pictures prior to its dissolution on September 29, 1944. Approximately 99% of its common stock and 33⅓% of its preferred stock were held by Radio-Keith-Orpheum Corporation.

16. RKO Proctor Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

17. RKO Midwest Corporation, a wholly owned subsidiary of Radio-Keith-Orpheum Corporation, is a corporation organized and existing under the laws of the State of Ohio, with a place of business at 1270 Sixth Avenue, New York, New York, and is engaged in the business of exhibiting motion pictures.

18. RKO was organized in 1928 by Radio Corporation of America largely for the purpose of obtaining an effective means of developing the use of its motion

picture sound recording and reproduction devices in the motion picture production and exhibition fields.

19. At the time of its organization, RKO secured production and distribution facilities by merger with a small company, FBO Productions, Inc., which had limited production facilities and a national distributing organization. RKO invested substantial sums to modernize these facilities.

20. The formation of RKO introduced a new and substantial competitive factor in the production and distribution of motion pictures.

21. During its initial organizational period, RKO acquired interests in a number of companies operating circuits of vaudeville theatres.

22. RKO went into receivership in 1933 and continued in receivership and reorganization until 1940. At the time of its receivership RKO operated considerably more theatres than its present total of 106. During the receivership it lost 57 theatres.

23. The organization of RKO did increase competition in each of the three branches of the industry.

24. Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 321 West 44th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

25. On April 4, 1923, the four Warner brothers, Harry M., Jack L., Albert, and Sam, transferred their business of production and distribution of motion pictures to a corporation known as Warner Bros. Pictures, Inc. (hereafter referred to as Warner).

26. Beginning in 1925, Warner began the work of developing sound pictures under license and agreements from Western Electric, culminating in the production of such sound pictures as "The Jazz Singer".

starring Al Jolson, in October, 1927, and the first 100% talking picture "The Lights of New York" in the summer of 1928.

27. The Stanley Company of America had in 1928 and for a year prior thereto about 250 theatres situated principally in and around Pennsylvania and New Jersey.

28. Negotiations were begun with the view of exchanging stock of Warner for the stock of Stanley Company of America. This transaction was consummated later in 1928.

29. With the acquisition of the stock of Stanley Company of America, Warner acquired 250 theatres which could be immediately equipped with sound installation.

30. In the year and nine months immediately following the acquisition of the stock of Stanley Company of America Warner secured in a similar fashion several other circuits of theatres owning theatres in the same general locality and a smaller number of theatres scattered in various other parts of the country.

31. In 1931 Warner had an interest in 591 theatres, the largest number of theatres in which Warner has ever had an interest.

32. Today, the Warner companies have an interest in 547 theatres—a net reduction of 44 from its peak holdings of 591 in 1931.

33. First National Pictures, Inc., a corporation engaged in the production and distribution of silent motion pictures, had been organized as far back as 1917 by approximately 24 exhibitors on a cooperative basis for the basis of acquiring film of first quality for exhibition in their own theatres, as well as for distribution by them for other theatres in the respective territories in which they operated.

34. In 1928 Stanley Company of America owned ⅓ of the stock of First National Pictures, Inc., all the

stock of First National Pictures, Inc., being subject to a voting trust.

35. Warner acquired as part of the Stanley Company of America transaction in 1928, ⅓ of the stock of First National Pictures, Inc.

36. At or about the time of the acquisition of the Stanley Company of America stock, or shortly thereafter, Warner purchased another ⅓ of the stock of First National Pictures, Inc., from other First National Pictures, Inc. stockholders.

37. Subsequently, in 1929, Warner acquired the remaining ⅓ of the stock of First National Pictures, Inc., from defendant Twentieth Century-Fox.

38. Vitagraph, Inc., a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and is engaged in the business of distributing motion pictures. On July 20, 1944, its name was changed to Warner Bros. Pictures Distributing Corporation.

39. Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a corporation organized and existing under the laws of the State of New York, with a place of business at 321 West 44th Street, New York, New York, and, among other things, acts as booking agent for the exhibition interests of the said Warner Bros. Pictures, Inc.

40. Twentieth Century-Fox Film Corporation is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 444 West 56th Street, New York, New York, and is engaged in the business of producing, distributing, and exhibiting motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

41. Twentieth Century-Fox produces its features in its own studio in Los Angeles, California, distributes

them in this country through thirty-one branches or exchanges which it operates in the principal centers of population, and licenses its features for exhibition in its own and other theatres.

42. Twentieth Century-Fox acquired its initial interest in theatres through the purchase of stock in corporations then engaged in operating theatres. Since such original acquisition, it has acquired additional interests in theatres, some of which were acquired in competition with other defendants and with independent circuits and some of which are new theatres constructed by it.

43. National Theatres Corporation is owned and controlled by Twentieth Century-Fox Film Corporation, and is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 2854 Hudson Boulevard, Jersey City, New Jersey, and is a holding company for the theatre interests of the said Twentieth Century-Fox Film Corporation.

43(a). The theatre holdings of the major defendants have played a vital part in effecting violations of the Sherman Anti-trust Act.

43(b). Each of the defendants, Fox, Loew, Paramount, RKO and Warner has since 1940 increased its interest in theatres in which it had had an interest. Fox, Paramount and Warner, and RKO to a lesser extent, have acquired an interest since 1940 in a number of theatres in which they had had no interest prior thereto. The foregoing acquisitions were permitted under the consent decree of November, 1940.

44. Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated companies, in various parts of the United States and in foreign countries.

45. Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of California, with a place of business at 700 Santa Monica Boulevard, Hollywood, California, and is engaged in the business of producing motion pictures.

46. Columbia Pictures of Louisiana, Inc., a wholly owned subsidiary of Columbia Pictures Corporation, is a corporation organized and existing under the laws of the State of Louisiana, with a place of business at 150 South Liberty Street, New Orleans, Louisiana, and is engaged in the business of distributing motion pictures.

47. Universal Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of producing and distributing motion pictures, either directly or through subsidiary or associated corporations, in various parts of the United States and in foreign countries. On May 25, 1943, its name was changed to Universal Pictures Company, Inc., when a subsidiary of the same name was merged into it, but Universal Corporation was the surviving corporation.

48. The corporation named in the complaint as Universal Pictures Company, Inc. was a subsidiary corporation, controlled by Universal Corporation, which was engaged in the business of producing motion pictures, prior to its merger into Universal Corporation on May 25, 1943.

49. Universal Film Exchanges, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1250 Sixth Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

50. The Universal group of defendants at the time of the trial consisted of the following corporations: (1) Universal Pictures Company, Inc., (hereinafter sometimes called Universal Pictures), a Delaware cor-

POOR COPY

poration with its principal office in New York, N.Y., engaged in the business of producing motion pictures and distributing the same through wholly-owned subsidiaries; (2) Universal Film Exchanges, Inc. (hereinafter sometimes called Universal Film Exchanges), a Delaware corporation, with its principal office in New York, N.Y., engaged in the business of distributing motion pictures throughout the United States (except for the Metropolitan District of New York City), a wholly-owned subsidiary of Universal Pictures; (3) Big U Film Exchange, Inc. (hereinafter sometimes called Big U), a New York corporation, with its principal office in New York, N. Y., engaged in the business of distributing motion pictures throughout the Metropolitan District of New York City, a wholly-owned subsidiary of Universal Pictures. The term "Universal" as used herein means any or all of the Universal defendants.

51. Prior to May 25, 1943, the name of Universal Pictures Company, Inc., was Universal Corporation, incorporated in Delaware in 1936. It owned approximately 92% of the outstanding common stock of a Delaware corporation which was incorporated in the year 1925 and was also known as Universal Pictures Company, Inc. Said corporation last-named had its principal office in New York, N.Y., and was engaged in the business of producing motion pictures and distributing the same through its subsidiaries. It owned all of the outstanding stock of Universal Film Exchange, Inc., and 20% of the outstanding common stock of Big U Film Exchange, Inc. The other 80% of said stock was owned by Universal Corporation. On May 25, 1943, Universal Pictures Company, Inc., (Delaware 1925) was merged into Universal Corporation (the surviving corporation), and the name of the surviving corporation was changed to Universal Pictures Company, Inc.

52. Big U Film Exchange, Inc., a wholly owned subsidiary of Universal Corporation, is a corporation organized and existing under the laws of the State of New York, with a place of business at 1250 Sixth

Avenue, New York, New York, and is engaged in the business of distributing motion pictures.

53. United Artists Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 729 Seventh Avenue, New York, New York, and is engaged in distribution of motion pictures in various parts of the United States and in foreign countries.

54. During the entire period in question United Artists Corporation distributed photoplays in the United States of America that were produced by David O. Selznick, Mary Pickford, Charles Chaplin, Hunt Stromberg, William Cagney, Bing Crosby, Edward Small, Sol Lesser, Lester Cowan, Jack Skirball, Benedict Bogeaus, Seymour Nebenzal, Jules Levey, David Loew, Arnold Pressburger, Charles R. Rogers, Andrew Stone, Constance Bennett, Howard Hughes, Preston Sturgis, J. Arthur Rank, Edward Golden, or corporations with which the aforesaid individuals were associated and other independent producers.

55. United Artists Corporation maintains 26 branches or exchanges located throughout the United States, and through these facilities it distributes and has distributed all of the product handled by it during the period in question.

56. Paramount Pictures, Inc.; Loew's Incorporated; Radio-Keith-Orpheum Corporation; Warner Bros. Pictures, Inc; and Twentieth Century-Fox Film Corporation and their respective distribution and exhibition subsidiaries are the five major defendants. Columbia Pictures Corporation, Universal Pictures Company, Inc. and United Artists Corporation and their respective distribution subsidiaries are the three minor defendants.

57. As between the eight defendants, Paramount, Loew's Fox, Warner, Columbia, United Artists, and Universal, there are no officers or directors in common, and none of said defendants owns any controlling stock or other securities in any other of said defendants.

58. Neither of the defendants Columbia, Universal and United Artists owns any theatres.

59. There exists active competition among the defendants and others in the production of motion pictures.

60. None of the defendants has monopolized or attempted to monopolize or contracted or combined or conspired to monopolize or to restrain trade or commerce in any part of the business of producing motion pictures.

61. In the distribution of feature motion pictures no film is sold to the exhibitor; the right to exhibit under copyright is licensed.

62. In licensing features, each of the distributor-defendants has agreed with each of its respective licensee that the licensee should charge no less than a stated admission price during the exhibition of the feature licensed.

63. The minimum admission prices included in licenses of each of the eight distributor-defendants for any given theatre are in general uniform, being the usual admission prices currently charged by the exhibitor.

64. The defendants' licenses are in effect price-fixing arrangements among all of the distributor-defendants, as well as betwen such defendants invididually and their various exhibitors. Thus there was a general arrangement of fixing prices in which both the distributors and exhibitors were involved. The licenses required existing admission price schedules to be maintained under severe penalties for infraction. In the case of such exceptional features as "Gone With The Wind", "For Whom The Bell Tolls", "Wilson", and "Song of Bernadette", licensed for exhibition prior to general release and as to which the distributors were not satisfied with current prices, they would refuse to grant licenses unless the prices were raised.

65. The defendant granting film licenses have agreed with their licensees to a system which determines

minimum admission prices in all theatres where feature motion pictures licensed by them are exhibited. In this way are controlled the prices to be charged for most of the feature motion pictures exhibited either by the defendants or by independents within the United States.

66. All of the five major defendants have a definite interest in keeping up prices in any given territory in which they own theatres and this interest they were safeguarding by fixing minimum prices in their licenses when distributing films to exhibitors in those areas. Even if the licenses were at flat rate, a failure to require their licensees to maintain fixed prices would leave them free for lowering the current charge to decrease through competition the income to the licensor on theatres in the neighborhood. The whole system presupposed a fixing of prices by all parties concerned in all competitive areas. There exists great similarity, and in many cases identity, in the minimum prices fixed for the same theatres in the licenses of all of the defendants.

67. The major defendants made operating agreements as exhibitors with each other and with independent exhibitors in which joint operation of certain theatres covered by the agreements is provided and minimum admission prices to be charged are either stated therein or are to be jointly determined by other means. These agreements show the express intent of the major defendants to maintain prices at artificial levels.

68. Certain master agreements and franchises between various of the defendants in their capacities as distributors and various of the defendants in their capacities as exhibitors stipulate minimum admission prices often for dozens of theatres owned by an exhibitor-defendant in a particular area in the United States.

69. Licenses granted by one defendant to another disclose the same interrelationship among the defendants. Each of the five major defendants as an exhibitor has been licensed by the other seven defendants as distributors to exhibit the pictures of the latter at specified

minimum admission prices. RKO, Loew's, Warner, Paramount, and Fox, in granting and accepting licenses with minimum admission prices specified, have among themselves engaged in a national system to fix prices, and Columbia, Universal, and United Artists, in requiring the maintenance of minimum admission prices in their licenses granted to these exhibitor-defendants, have participated in that system.

70. The distributor-defendants have acquiesced in the establishment of a price-fixing system and have conspired with one another to maintain prices.

71. In agreeing to maintain a stipulated minimum admission price, each exhibitor thereby consents to the minimum price level at which it will compete against other licensees of the same distributor whether they exhibit on the same run or not. The total effect is that through the separate contracts between the distributor and its licensees a price structure is erected which regulates the licensees' ability to compete against one another in admission prices. Each licensee knows from the general uniformity of admission price practices that other licensees having theatres suitable for exhibition of a distributor's feature in the particular competitive area will also be restricted as to maintenance of minimum admission prices, and this acquiescence of the exhibitors in the distributor's control of price competition renders the whole a conspiracy between each distributor and its licensees. An effective system of price control in which the distributor and its licensees knowingly take part by entering into price-restricting contracts is thereby erected.

71(a). This system also restricted competition between the theatres of the major defendants in those areas where there were theatres of more than one defendant since the minimum price to be charged by any theatre licensee was fixed and the licensee was prevented from competing in the business of exhibition by lowering his price.

71(b). Complete freedom from price competition among theatre holders could only be obtained if prices

were fixed by all distributors and such a result was substantially obtained. Consequently the system of theatre licensing had a vital and all-pervasive effect in restricting competition of theatre patronage.

72. The differentials in admission price set by a distributor in licensing a particular feature in theatres exhibiting on different runs in the same competitive area are calculated to encourage as many patrons as possible to see the picture in the prior-run theatres where they will pay higher prices than in the subsequent runs. The reason for this is that if 10,000 people of a city's population are ultimately to see the feature—no matter on what run—the gross revenue to be realized from their patronage is increased relatively to the increase in numbers seeing it in the higher-priced prior-run theatres. In effect, the distributor, by the fixing of minimum admission prices, attempts to give the prior-run exhibitors as near a monopoly of the patronage as possible.

73. Among the provisions common to the licensing contracts of all the distributor-defendants are those by which the licensor agrees not to exhibit or grant a license to exhibit a certain feature motion picture before a specified number of days after the last date of the exhibition therein licensed. This so-called period of "clearance" or "protection" is stated in the various licenses in differing ways; in terms of a given period between designated runs; in terms of admission prices charged by competing theatres; in terms of a given period of clearance over specifically named theatres; in terms of so many days' clearance over specified areas or towns; in terms of clearances as fixed by other distributors; or in terms of combinations of these formulae.

74. The cost of each black and white print is from $150 to $300, and of a technicolor print is from $600 to $800. Many of the bookings are for less than the cost of the print so that exhibitions would be confined to the larger high-priced theatres unless a system of successive runs with a reasonable protection for the earlier runs is adopted in the way of clearance.

75. Without regard to period of clearance, licensing features for exhibition on different successive dates is essential in the distribution of feature motion pictures.

76. Either a license for successive dates, or one providing for clearance, permits the public to see the picture in a later exhibiting theatre at lower than prior rates.

77. A grant of clearance, when not accompanied by a fixing of minimum admission prices or not unduly extended as to area or duration affords a fair protection of the interest of the licensee in the run granted without unreasonably interfering with the interest of the public.

78. Clearance, reasonable as to time and area, is essential in the distribution and exhibition of motion pictures. The practice is of proved utility in the motion picture industry and necessary for the reasonable conduct of the business.

79. The major defendants have acquiesced in and forwarded a uniform system of clearances and in numerous instances have maintained unreasonable clearances to the prejudice of independents.

80. Some licenses granted clearance to all theatres which the exhibitor party to the contract might thereafter own, lease, control, manage, or operate against all theatres in the immediate vicinity of the exhibitor's theatre thereafter erected or opened. The purpose of this type of clearance agreements was to fix the run and clearance status of any theatre thereafter opened not on the basis of its appointments, size, location, and other competitive features normally entering into such determination, but rather upon the sole basis of whether it were operated by the exhibitor party to the agreement.

81. The distributor-defendants have acted in concert in the formation of a uniform system of clearance for the theatres to which they license their films and the exhibitor-defendants have assisted in creating and have acquiesced in this system.

82. The defendants have acted in concert in their grant of run and clearance.

83. Clearances are given to protect a particular run against a subsequent run and the practice of clearance is so closely allied with that of run as to make findings on the one applicable to the other.

84. Both independent distributors and exhibitors, when attempting to bargain with the defendants, have been met by a fixed scale of clearance, runs, and admission prices to which they have been obliged to conform if they wished to get their pictures shown upon satisfactory runs or were to compete in exhibition either with the defendants' theatre or theatres to which the latter had licensed their pictures.

85. The fixed system of runs and clearances which involved a cooperative arrangement among the defendants, was also designed to protect their theatre holdings, safeguard the revenue therefrom, and eliminate competition. The major defendants' predominant position in first-run theatre holdings was strongly protected by a fixed system of clearances and runs. The power to fix clearances and runs which existed and was exercised by the major defendants was in itself a power to exclude independents who were competitors, and was accompanied by actual exclusion.

85(a). This system gave the defendants a practical control over the run and clearance status of any given theatre. It involved discrimination against persons applying for licenses and seeking runs and clearances for their theatres, because they had no reasonable chance to improve their status by building or improving theatres while the major defendants possessed superior advantages. Therefore, though the evidence was insufficient to prove that there was discrimination in negotiation for clearances and runs theatre by theatre, because it was well-nigh impossible to establish that a particular clearance or run was not refused because of the inadequacy of the applicant's theatre, the system of clearances and runs was such as to make com-

POOR COPY

BLEED THROUGH

petition against the defendants practically impossible, and there was discrimination in particular instances.

86. Formula deals have been entered into by Paramount and by RKO with independent and affiliated circuits. The circuit may allocate playing time and film rentals among the various theatres as it sees fit. Arrangements whereby all the theatres of a circuit are included in a single agreement, and no opportunity is afforded for other theatre owners to bid for the feature in their several areas, seriously and unreasonably restrain competition.

87. Loew's is not, and never has been, a party either as a distributor or as an exhibitor, to any "formula deal" license agreements.

88. Master agreements which cover exhibition in two or more theatres in a particular circuit and allow the exhibitor to allocate the film rental paid among the theatres as it sees fit and also to exhibit the features upon such playing time as it deems best and leaves other terms to the circuit's discretion, have been entered into by the distributor-defendants and unreasonably restrain trade.

89. Franchises have been entered into by the distributor-defendants with affiliated and non-affiliated circuits which unreasonably restricted the opportunities of small exhibitors to license films in competition with the theatres of such circuits by tying up the films released for long periods of time. None of the major defendants has entered into any franchises since November, 1940, and they have none in existence in 1950.

90. Loew's today has outstanding no franchise agreements for any theatre in which it does not have an interest, and Loew's is not currently granting franchises. During its entire history Loew's, as a distributor, granted a total of 213 franchises, of which 154 were to independent theatres and only 59 to those in which any other producer-exhibitor had an interest.

91. Twentieth Century-Fox has not granted any franchises since June 6, 1940. In 1938-39, the motion

picture season in which Twentieth Century-Fox had the greatest number of franchises outstanding, there were 400. Of these, 361 were with independent exhibitors.

92. During the period in question Universal entered into franchise agreements with 727 independent exhibitors and 43 affiliated exhibitors.

93. Block-booking, when the license of any feature is conditioned upon taking of other features, is a system which prevents competitors from bidding for single features on their individual merits.

94. For many years the distributor-defendants, except United Artists Corporation, licensed their films in "blocks" or indivisible groups, before they had been actually produced. In such cases the only knowledge prospective exhibitors had of the films which they had contracted for was from a description of each picture by title, plot, and players. In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancellation for a certain number of pictures. Because of complaints of block booking and blind-selling based upon the supposed unfairness of contracts which often includes pictures the inferior quality of which could not be known, Sections III and IV of the consent decree required the five consenting distributors to trade-show their films before offering them for license and limited the number which might be included in any contract to five. More than one block of five, however, could be licensed where the contents of any had been trade-shown. While this restriction in the consent decree has now ceased by time limitation, the consenting distributors have continued to observe the restriction. The non-assenting distributors have retained up to the present time their previous methods of licensing in blocks, but have allowed their customers considerable freedom to cancel the license as to a percentage of the pictures contracted for.

95. United Artists did not at any time license the exhibition of its pictures in blocks but on the contrary

licensed the exhibition of its pictures separately and individually.

96. During the period in question United Artists did not condition the licensing of any photoplay in any exhibitor's theatre upon that exhibitor's agreement to license other United photoplays for exhibition in said theatre.

97. Blind-selling is a practice whereby a distributor licenses a feature before the exhibitor is afforded an opportunity to view it.

98. Since the consent decree of November 20, 1940, the five major defendants have given each exhibitor, whether a defendant or independent, an opportunity at trade shows to view each feature before licensing it. In general, trade shows, which are designed to prevent blind-selling, are poorly attended by exhibitors.

99. During the 1943-44 season, the number of features distributed by eight distributor defendants and the three other national distributors were as follows:

		Percentages of Total	
	Number of Films	With "Westerns" included	With "Westerns" excluded
Distributor-defendants:			
Fox	33	8.31	9.85
Loew's	33	8.31	9.85
Paramount	31	7.81	9.25
RKO	38	9.57	11.34
Warner	19	4.79	5.67
Columbia	41	10.32	12.24
United Artists	16	4.04	4.78
Universal	49	12.34	14.63
Sub-total	260		
Other National Distributors:			
Republic: 29 features, 30 "Westerns"		14.86	8.66
Monogram: 26 features, 16 "Westerns"		10.58	7.76
PRC: 20 features, 16 "Westerns"		9.07	5.97
		100.	100.
Sub-total, 137	397		
Total without "Westerns"	335		

100. The approximate total domestic film rental for the features listed in Finding 99 is as follows:

		Percent of Total
Fox	$ 50,300,000	18
Loew	54,700,000	20
Paramount	41,100,000	15
RKO	28,500,000	10
Warner	29,400,000	10
Columbia	19,600,000	7
United Artists	14,400,000	5
Universal	26,300,000	9
Republic	7,700,000	3
Monogram	4,500,000	2
PRC	1,900,000	1
Total	$278,400,000	100

101. Continuously since its organization RKO has distributed features for independent producers. The particular independent producers whose features have been distributed by RKO have varied from time to time. In the nine seasons ending 1943-44, 19.8% of the features distributed by RKO were independently produced, and 28.4% of RKO's gross receipts from domestic licenses of features was derived from such independently produced features.

102. It would be financially impossible for RKO to operate its theatres on features distributed by RKO alone.

103. Twentieth Century-Fox produced less than 9 percent of the total number of features nationally distributed in the United States during each year between 1936-37 and 1944-45.

104. Universal has customarily produced at its studios at Universal City, California, during each theatrical year (commencing on or about September 1st) between 45 and 50 feature-length motion picture photoplays, seven so-called Westerns, four Serials, 15 two-reel subjects, 30 single-real subjects, and 104 newsreels.

105. Said motion pictures were distributed by Universal and licensed for exhibition by motion picture theatres throughout the United States by means of a system of 31 exchanges located in various States in the

POOR COPY

BLEED THROUGH

United States, from the East Coast to the West Coast and from Canada to the Southern boundary. Universal also maintained a Home Office in the City of New York.

106. In marketing its motion pictures, Universal's usual and customary practice was to offer to license to exhibitors, by title and description as aforesaid, its entire line of pictures, consisting of feature-length motion picture photoplays, Westerns, short-subjects (consisting of serials and two-reel and one-reel pictures) and newsreels. In this way approximately 50 feature-length motion picture photoplays, and group of Westerns, short-subjects, two so-called "Special" photoplays, three features produced by independent producers, and newsreels, were offered to exhibitors by Universal each year.

106(a). During recent years, in excess of 600 feature-length motion picture photoplays were released each year in the United States, exclusive of foreign-made films. Universal releases of feature-length photoplays, including Westerns and so-called Marques pictures, during said period, equally approximately 8% of the total number of feature-length photoplays released in the United States each year.

107. During the period in question, United Artists Corporation distributed between 20 to 26 pictures a year when the corporation had a good year and has handled as low as 4 in distribution in a releasing season.

108. At no time during the period in question did United Artists distribute more than 5% of the feature photoplays American made and distributed in the United States of America and generally distributed less than 5% of such releases.

109. That in each distribution agreement with each producer using the facilities of United Artists for distribution among other things there appears substantially the following language:

> United agrees to devote its best efforts to the proper marketing and disposition of the motion

pictures delivered hereunder in all the territories licensed hereunder wherein it customarily markets motion pictures, and to make such marketing as complete and efficient as practicable, so that the gross returns from the marketing of the product hereunder shall be as large as possible and at the same time consistent with the sound business policy of United.

United will use its best efforts to procure prices, license fees and rentals in a fair and open market reasonably satisfactory to the Producer.

Exhibition Contracts: The exhibition contracts for each of such motion pictures delivered hereunder shall be made separate and apart from the exhibition contract of any other motion picture marketed by United, with the exception that in territories other than the United States where it is customary to include more than one motion picture on a contract, the Producer authorizes United to market its product in accordance with that custom. In no event, however, shall any motion picture of the Producer be used to enforce the licensing, leasing or other disposition of any other motion picture marketed by United, and in such territory where it is the custom to include on one contract more than one motion picture United shall set out the respective license fees for each motion picture after the name of such motion picture.

United agrees upon the written direction of Producer that United shall market wherever permissible the motion pictures designated by the Producer or its agent as a unit, and in such case such unit shall be licensed separate and apart from any other motion picture marketed by United, with the exception that in those countries where it is the custom to market all of the motion pictures on one contract, United shall adhere to the prevailing custom.

The producer shall have the right to designate a representative for the territories hereinafter specified. The Producer shall bear all the expenses

POOR COPY

BLEED THROUGH

of such representative. Such representative must have an office in the central location of such territory, and if so United shall submit to such representative for his approval or rejection all proposed written contracts with exhibitors for that territory. The territories and their central location are as follows:

Territory	Central location
United States and Canada	New York
British Isles	London
Australia	Sydney

Producer agrees that such submission shall not be necessary if made impractical by conditions beyond the control of United, such as conditions arising out of war.

If the Producer has designated such a representative for any such territory, United shall submit for his approval or rejection each proposed written contract for the distributing, exhibiting, or marketing of such Producer's motion pictures or any of them in the territory in which such representative is acting. No such contract shall be accepted by United if within three (3) succeeding business days following the date on which said proposed written contract has been received by the Producer or its representative the Producer or its representative shall return such proposed contract to United with its rejection noted thereon or appended thereto.

Should the Producer or its representative reject any such proposed contract the Producer or its representative shall have fourteen (14) days from the date of rejection in which to obtain a more favorable contract. Should the Producer or its representative fail so to do the original contract shall ipso facto be deemed approved unless the Producer or its representative shall have designated its original rejection as final. No proposed contract on which the rejection has been designated as final shall be entered into by United.

Should the Producer or its representative at any time agree in advance with United upon the rental

terms or license fees for the distribution, exhibition, or marketing of any motion picture in any specified theatre or situation, United shall not be obligated to submit the contract containing the terms so agreed upon to the Producer or its representative for approval.

110. Various contract provisions by which discriminations against small independent exhibitors and in favor of the large affiliated and unaffiliated circuits were accomplished are: suspending the terms of a given contract, if a circuit theatre remains closed for more than eight weeks, and reinstating it without liability upon reopening; allowing large privileges in the selection and elimination of films; allowing deductions in film rentals if double bills are played; granting move overs and extended runs; granting road-show privileges; allowing overage and underage; granting unlimited playing time; excluding foreign pictures and those of independent producers; granting rights to question the classification of features for rental purposes. These provisions are found most frequently in franchises and master agreements, which are made with the larger circuits of affiliated and unaffiliated theatres. Small independents are usually licensed, however, upon the standard forms of contract, which do not include them. The competitive advantages of these provisions are so great that their inclusion in contract with the larger circuits constitutes an unreasonable discrimination against small competitors.

111. The discriminations referred to in Finding 110 can be enjoined but there is no effective way of preventing similar results from the use of other discriminatory devices in the absence of divorcement relief.

112. Agreements were made by the exhibitor-defendants with each other and their affiliates by which given theatres of two or more exhibitors, normally in competition with each other, were operated as a unit, or most of their business policies collectively determined by a joint committee or by one of the exhibitors, and by which profits of the "pooled" theatres were divided among the exhibitors in or owners of such theatres

according to pre-agreed percentages or otherwise. Some of the agreements provide that the parties thereto may not acquire other theatres in the competitive vicinity without first offering them for inclusion in the "pool". The result is to eliminate competition pro tanto both in exhibition and in distribution of features which would flow almost automatically to the theatres in the earnings of which they have a joint interest.

113. Other forms of operating agreements are between major defendants and independent exhibitors rather than between major defendants. The effect is to ally two or more theatres of different ownership into a coalition for the nullification of competition between them and for their more effective competition against theatres not members of the "pool".

114. In certain other cases the operating agreements are accomplished by leases of theatres, the rentals being determined by a stipulated percentage of profits earned by the "pooled" theatres. This is but another means of carrying out the restraints found above.

115. Many theatres, or the corporations owning them, have been held jointly by one or more of the exhibitor-defendants together with another exhibitor-defendant. These joint interests have enabled the major defendants to operate theatres collectively rather than competitively. When one of the major defendants has owned an interest of five per cent or less, such an interest was *de minimis* and was only to be treated as an inconsequential investment in exhibition. A summary of theatres jointly owned by two defendants is set forth in the following tabulation taken from RKO's Exhibit 11:

Paramount-Fox	6
Paramount-Loew's	14
Paramount-Warner	25
Paramount-RKO	150
Loew's-RKO	3
Loew's-Warner	5
Fox-RKO	1
Warner-RKO	10
Total	214 Theatres

The major defendants have, since the remand of this case, entered into orders and stipulations providing for the dissolution of all such joint interests still held by them, except those which were *de minimis.*

116. The interest of Newman in Evergreen State Amusement Corporation was that of an investor.

117. Many theatres, or the corporations owning them, have been held jointly by one or more of the exhibitor-defendants with independents. A summary of such theatres is set forth in the following tabulation taken from RKO's Exhibit 11:

Paramount	993
Warner	20
Fox	66
RKO	187
Loew's	21
Total	1,287

Some involved no more than innocent investments by those who were not actual or potential theatre operators. Others involved an alliance with one who was or would have been an operator but for the joint ownership, thereby eliminating putative competition. When a defendant or an independent has owned an interest of five per cent or less, such an interest was *de minimis* and was only to be treated as an inconsequential investment in exhibition. Of the theatres listed above, 177 theatres in which Paramount had an interest and 32 in which RKO had one were *de minimis.* The dissolution of all joint interests with a present or potential operator has been provided for in orders and stipulations entered into by the major defendants since the remand of this case.

118. In the year 1945 there were about 18,076 motion picture theatres in the United States, of which the five major defendants had interests in 3,137, or 17.35 percent. Of the latter, Paramount or its subsidiaries owned independently of the other defendants 1,395—a little less than half, or about 7.72 percent; Warner 501, or about 2.77 percent; Loew's 135, or about .74 percent;

POOR COPY

BLEED THROUGH

Fox 636, or about 3.52 percent; and RKO 109, or about .60 percent. There were 361 theatres, or about 2.00 percent, in which two or more of these defendants had joint interests, whether held directly or indirectly through stock ownership in the same corporation or through a lease or operating agreement. This tabulation excludes theatres connected with one or more of the defendants through film-buying or management contracts or through corporations in which a defendant owned an indirect minority stock interest. It includes all theatres in which each defendant otherwise owned a direct or indirect interest of any amount.

119. Former Finding 119 has been vacated.

120. On January 1, 1935, Loew's operated in the United States 126 theatres. The first-run theatres, which are engaged to a large extent in exhibiting Loew's own product, Metro pictures, serve as "show cases" for those pictures in the areas where the theatres are located.

121. The formation of RKO resulted in the conversion of vaudeville theatres acquired by it into motion picture theatres and thereby introduced new and substantial competition into the exhibition field in the cities in which each of these theatres was located, except insofar as such competition was affected by the practices of the defendants.

122. Ownership and operation by RKO of theatres in certain principal cities of the United States enables RKO through the utilization of the facilities of such theatres to plan and direct the first exploitation of the features which it distributes in such areas in a more effective manner than is possible in areas where RKO does not operate theatres.

123. The successful exhibition of a feature in its initial runs in any area is widely publicized and closely observed by subsequent run exhibitors in that area and success in exploiting a picture in such exhibitions produces increased revenue both for the distributor and for subsequent run exhibitors.

124. Each of the five major defendants is able to coordinate the initial exhibition of its features in its theatres with an extensive and accurately timed national advertising campaign.

125. Twentieth Century-Fox is interested in theatres in only 16 of the 92 cities having a population of over 100,000. In 12 of these 16 cities features of one or more defendants are licensed to independent first run exhibitors competing with Twentieth Century-Fox [New York, Seattle, Denver, Portland, Oakland, San Diego, Long Beach, Los Angeles, San Francisco, Spokane, Sacramento, and Kansas City, Kansas] as well as to other defendants having theatres in some of these cities. In three of the remaining four cities, features of one or more defendants are licensed on first run to other defendants.

126. The 17.35% of theatres which comprise the five circuits of the major defendants pay from 35 to 54% of the total domestic film rental, respectively, received by the eight distributor defendants and 45% of the total domestic film rental received by all of said distributor-defendants. The five largest unaffiliated circuits together pay less than 5% of such rental.

127. The major defendants, as distributors, during the 1943-44 season, received from 71 to 81% of the film rental that was paid to all distributors by exhibitors affiliated with the five major defendants. The minor defendants received from 26 to 15% of such rental and the independent distributors from 2½ to 4½% of such rental.

128. During the 1943-44 season the eight distributor defendants received 45.2% of the total feature film rental received by them from theatres affiliated with the five major defendants; and 54.8% of such rental from other exhibitors.

129. In some situations where Paramount had theatre interests, other defendant distributors licensed their features to competing theatres and not to the Paramount theatres, and in some cases the operating com-

POOR COPY

BLEED THROUGH

panies in which paramount was interested were not able to obtain the right to exhibit the feature of some of the other defendant distributors.

130. Paramount features are licensed for exhibition in from 8,000 to 14,500 theatres in the United States annually. The number of licenses each year varies from feature to feature and from year to year.

131. In 21 of the 36 out of the 92 cities where Loew's operates theatres none of the other four producer-exhibitors licensed its features in the 1943-44 season for first-run exhibition in a Loew's theatre, to the extent of more than three features, the Loew's theatres' first-run exhibition being otherwise limited to its own features and those of non-theatre-owning producers.

132. Over the 10 years from 1935 to 1945, the total number of features licensed by the other four theatre-owning distributors to Loew's first-run houses, decreased from 1,382 to 998 and the features of non-theatre-owning distributors increased from 1,201 to 1,879.

133. In 1935, the other four theatre-owning distributors earned $2,611,986 from Loew's theatres and the non-theatre-owning distributors earned $2,205,330 [$406,656 less]. In 1944, the non-theatre-owning distributors earned $5,261,116 in Loew's theatres, which was $419,477 more than the $4,841,639, earned in Loew's theatres in that year by the four other theatre-owning distributors.

134. In 1944, the percentage of the total film rental paid by Loew's theatres to each of the non-theatre-owning distributors, Columbia [8.8%], United Artists [8.3%] and Universal [7.4%], was higher than that paid to each of three producer-exhibitors, RKO [2.1%], Warner Bros. [2.1%] and Twentieth Century-Fox [6.1%].

135. In the year 1944, of the total film rental paid by Loew's theatres, 47.9% was to Loew's itself for the exhibition of Loew's pictures, and 27.1% was to non-theatre-owning distributors. Thus a total of 75% of all film

rentals paid by Loew's theatres went to persons other than the four other defendant-producer-exhibitors.

136. During the 1943-44 season RKO received 56.9% of its total license fees from independent theatres, 14.1% from its own theatres, and [in the aggregate] 29% from theatres affiliated with other defendants.

137. In the 1943-44 season, of the total number of exhibitions of features in first-run and metropolitan second-run-theatres operated by RKO, 23.1% were exhibitions of features distributed by RKO, 29.6% were exhibitions of features distributed by other theatre-owning distributors, and 47.3% were exhibitors of features distributed by non-theatre-owning distributors. In the same season the respective percentages of the feature film rentals paid by RKO were 30.6 to RKO, 43.7 to other theatre-owning defendants, and 23.7 to non-theatre-owning distributors.

138. In the 4 pre-war seasons of 1937-1940, Warner derived about 61-6/10% of its domestic gross rentals from theatres not affiliated with any of the defendants, about 14% from theatres in which it had an interest, about 13% from theatres in which Paramount had an interest, about 4% from theatres in which Twentieth Century-Fox had an interest, about 6% from theatres in which RKO had an interest, and less than 1% from theatres in which Loew had an interest.

139. Of its total domestic and foreign rentals Warner received about 30% from abroad, about 43% from theatres in which none of the defendants had an interest, about 10% from Warner's own American theatres, and the balance, about 16%, from American theatres in which one or more of the defendants had an interest.

140. Not a single one of the Loew first run theatres in the 39 of the 92 largest cities where Loew operates or has an interest in first run theatres licensed a Warner feature for exhibition in the 1943-44 season. In the same season the Warner theatres regularly exhibited the Loew features in many of the 28 of the 92 largest cities where Warner operated or had an interest in first run theatres.

POOR COPY

BLEED THROUGH

141. The dollars paid by Warner to each of the other defendants and by each of the other defendants to Warner show no uniformity of pattern from company to company from year to year.

142. There were marked variances from year to year in the sums paid as rental by the theatres in which Warner had an interest to United Artists, Universal, and Columbia, the non-theatre owning defendants.

143. Between 1937 and 1944 the theatres in which Warner had an interest substantially decreased the amount of film rental paid to the 5 theatre owning defendants, and substantially increased film rental paid to the non-theatre owning defendants.

143(a). During the 9 prewar years of 1933-1941, the average cost of American made Warner features rose from $241,000 in 1933 to $448,000 in 1940. By 1945 the average cost had risen to $1,371,000.

143(b). In the past the foreign business of Warner has been exceedingly profitable.

143(c). With the cessation of the war the foreign market for Warner pictures are being severely restricted.

144. Of the total film revenue received by Twentieth Century-Fox in 1944 from all theatres in the United States, 60.8 percent was paid by exhibitors not defendants in this action; 14.1 percent was paid by its own theatres; 1.26 percent by Loew theatres; 5.52 percent by RKO theatres; 13.46 percent by theatres in which Paramount had an interest; and 4.82 percent by Warner theatres.

145. On January 1, 1935, there were 13,386 theatres operating in the United States. In 1945, there were 18,076 theatres operating in the United States.

146. In about 60% of the 92 cities having population over 100,000 there are independent first run theatres.

147. In about 91 percent of the 92 cities with over 100,000 population there are first run theatres of more than one defendant or of a defendant and independents.

147(a). All the defendants entered into a horizontal conspiracy to fix prices, runs and clearances which was powerfully aided by the system of vertical integration of each of the five major defendants. Such a situation has made the vertical integration an active aid to the conspiracy. Vertical integration has furnished an incentive for such conspiracy.

147(b). There is close relationship between the vertical integrations and the illegal practices. The vertical integrations were a means of carrying out the restraints and conspiracies.

147(c). The interdependency of defendants to obtain pictures for their theatres, on the one hand, and on the other, to obtain theatre outlets for their pictures has lessened competition among defendants and between them and independents.

147(d). There is substantial proof that monopoly power existed among the eight distributor-defendants who were all working together. Considering that the vertical integrations aided the horizontal conspiracy mentioned in Finding 147(a) at every point, the defendants must be viewed collectively rather than independently as to the power which they exercised over the market by major defendants' theatre holdings.

147(e). Viewed collectively the major defendants owned in 1945 at least 70 percent of the first run theatres in the 92 largest cities.

148. In the aforementioned 92 cities, at least 70% of all of the first run theatres are affiliated with one or more of the major defendants. In 4 of said cities there are no affiliated theatres. In 38 of said cities there are no independent first run theatres. In the remaining 50 cities the degree of first run competition varies from the most predominantly affiliated first run situations, such as Boston, Chicago, Los Angeles, Philadelphia, St. Paul, and Washington, D. C., in each of which the independent first run theatres played less than eleven of the defendants' features on first run during the 1943-44 season, to the most predominantly independent first run situations, such as Nashville, Louisville, In-

POOR COPY

BLEED THROUGH

dianapolis, and St. Louis, where the affiliated first run theatres played at least 31 of the defendants' pictures on first run during that season. In none of the said 50 cities did less than three of the distributor-defendants license their product on first run to the affiliated. In 19 of said 50 cities less than three defendant-distributors licensed their product on first run to independent theatres. In a majority of said 50 cities the major share of all of the defendants' features were licensed for first run exhibition in theatres affiliated with the major defendants.

148(a). Viewed collectively the major defendants owned 60 percent of the first run theatres in cities with populations between 25,000 and 100,000.

148(b). In addition to the proof of monopoly control in cities of more than 25,000, there is substantial proof that in approximately 238 towns involving in all but about 17 cases populations of less than 25,000 but having two or more theatres, some single one of the five major defendants, or in about 18 cases two of the defendants, had all the theatres and therefore possessed a complete local monopoly in exhibition. [See Government Exhibit 488.] This Finding is not applicable to Loew's which had no theatres in the foregoing towns.

148(c). The film distribution in the 1943-44 season shows that one or more of the five major defendants exhibited on first run substantially all of the feature films distributed by the five major defendants in about 43 of the 92 cities of over 100 thousand, and substantially all of the feature films distributed by the eight defendants in about 143 of the 320 cities of 25,000 to 100,000. [See Government Exhibits 489, 490, 490A.]

148(d). As distributors, the five major defendants viewed collectively, received approximately 73 percent and the three minor defendants 21% of the domestic film rentals from the films, except Westerns, distributed in the 1943-44 season.

148(e). The percentages of first run theatre ownership and domestic film rentals controlled by the major

defendants when coupled with the strategic advantages of vertical integration created a power to exclude competition from the distribution and exhibition markets when desired.

148(f). This power might be exercised either against nonaffiliated exhibitors or distributors, for the ownership of what was generally the best first run theatres coupled with the possession by the defendants of the best pictures, enabled them substantially to control the market in first-run pictures.

148(g). There is substantial proof that the intent to exercise the monopoly power existed among the defendants.

149. Loew's operates first-run theatres in 36 of the 92 cities in the United States with more than 100,000 population; in every one of these 36 cities, there are other "first-run" theatres exhibiting the features of one or more of the other defendant distributors; in 21 of these 36, one or more of the other first-run theatres are operated by independents.

150. Of the 92 cities in the United States having a population in excess of 100,000, Twentieth Century-Fox is interested in first run theatres in 16 and licenses its features to them. In 4 of the remaining cities, none of the defendants has theatre interests. This leaves 72 cities in which there are first run theatres operated by defendants other than Twentieth Century-Fox. In 23 of the 72 cities, Twentieth Century-Fox licenses its features to independent exhibitors.

151. Except for a very limited number of theatres in the very largest cities, the 18,000 and more theatres in the United States exhibit the product of more than one distributor. Such theatres could not be operated on the product of only one distributor.

152. The major defendants aided each other in attaining a monopoly of exhibition and in restricting competition by refraining from having theatre interests in many areas where one of them had theatres.

POOR COPY

BLEED THROUGH

153. In cities of less than 100,000 in population, Paramount, Warner, Fox and RKO owned or operated theatres either in largely separate market areas or in pools, without more than trifling competition among themselves or with Loew's. In cities having a population of more than 100,000, there was in general little competition among the major defendants, although considerably more than in towns of under 100,000.

153(a). In cities of less than 100,000, Paramount had complete or partial interests in or pooling agreements [4] with other defendants affecting 1,236 theatres located in 494 towns. In 13 of these towns containing 31 of the theatres—only 3%—were theatres of another defendant. In 9% of these towns competition between Paramount and the only other defendant in the town was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres; and in this 9% were located 10% of Paramount's theatre interests. And in 88% of the towns, containing 87% of Paramount's theatre interests, Paramount was the only defendant operating theatres. Thus it appears that there was little, if any, theatre competition between Paramount and any other defendant in 97% of the towns of under 100,000 and in respect to 97% of the theatres in which Paramount had an interest.

153(b). Fox had similar theatre interests in 428 theatres located in 177 towns. In 13 of these towns containing 29 Fox theatres, or about 7% thereof, there were theatres of another defendant. In about 93% of the towns containing the same percentage of Fox's theatre interests, Fox was the only defendant operating theatres; in 22 of these towns there was but one theatre and a population capable of supporting only one theatre.

153(c). Warner had similar theatre interests in 306 theatres located in 155 towns of less than 100,000. In 17 towns, or 11%, containing 30 Warner theatres, or

[4] Pooling agreements and joint interests among defendants are treated in Findings 153-153(g) and 154-154(h) as indistinguishable for the purpose of summarizing geographical distribution.

10% of its holdings, there were theatres of another major defendant. In 3% of the towns, competition between Warner and the only other defendant in the town was substantially lessened or eliminated by means of pooling agreements; and in this 3% were located 4% of Warner's theatre interests. In 86% of the towns containing the same percentage of Warner's theatre interests, Warner was the only defendant operating theatres. Thus, there appears to have been little, if any, theatre competition between Warner and any other defendant in 89% of the towns and in respect to 90% of the theatres in which Warner had an interest. In 33 of these towns there was but one theatre and a population capable of supporting only one theatre.

153(d). Loew had interests in only 17 theatres located in 14 towns. In 4 towns containing 4 Loew theatres, there were theatres of another defendant. In 2 of the towns, competition was substantially lessened or eliminated by means of joint interests; and in these 2 were located 3 of Loew's theatre interests. In 8 of the towns, containing 10 Loew's theatre interests, Loew was the only defendant operating theatres. Thus, there appears to have been little, if any, theatre competition between Loew and any other defendant in 10 of the towns and in respect to 13 of the theatres in which Loew had an interest.

153(e). RKO had interests in 150 theatres located in 66 towns. In 6 towns, or 10%, containing 6 RKO theatres, or 4%, there was competition with another major defendant. In 60% of the towns, competition was substantially lessened or eliminated by means of pooling agreements, and in this 60% were located 73% of RKO's theatre interests. In 30% of the towns, containing 23% of RKO's theatre interests, RKO was the only defendant operating theatres. Thus, there appears to have been little, if any, competition between RKO and any other defendant in 90% of the towns and in respect to 96% of the theatres in which RKO had an interest.

153(f). The major defendants had interests altogether in 2,020 theatres located in 834 towns. In 26

towns, or 3% containing 100 of their theatres, or 5%, there was competition among some of them. In somewhat over 5% of the towns, competition between them was substantially lessened or eliminated by means of pooling agreements, and in this 5% were located 7% of their theatre interests. And in somewhat less than 92% of the towns, containing 88% of their theatre interests, only one of the major defendants owned theatres in the area. Thus, there appears to have been little, if any, competition among the five defendants or any of them in 97% of the towns and in respect to 95% of the theatres in which they had an interest.

153(g). The effect of the geographical distribution in towns having a population of less than 100,000 was largely to eliminate competition among all of the defendants in the areas where any of them had theatres. The statistics upon which these findings are based are contained in the appendix to this Court's opinion of July 25, 1949.

154. In cities of over 100,000 Paramount had complete or partial interests in or pooling agreements with other defendants affecting 352 theatres in 49 cities. In 18 of these cities, or 37%, containing 91 Paramount theatres, or 26%, there were theatres of other defendants. In an additional 10% of the cities, containing 17% of Paramount's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Paramount, both on first and later runs, that competition with Paramount was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 12% of these cities competition between Paramount and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 12% were located 18% of Paramount's theatre interest. And in 41% of the cities, containing 39% of Paramount's theatre interests, Paramount was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between Paramount and any other defendant in 63% of the

cities of over 100,000 and in respect to 74% of the theatres in which Paramount had an interest.

154(a). Fox had similar theatre interests in 211 theatres located in 17 cities. In 5 of these cities, or 29%, containing 54 Fox theatres, or 26%, there were theatres of other defendants. In an additional 18% of the cities, containing 41% of Fox's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Fox, both on first and later runs, that competition with Fox was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 53% of the cities, containing 33% of Fox's theatre interests, Fox was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between Fox and any other defendant in 71% of the cities and in respect to 74% of the theatres in which Fox had an interest.

154(b). Warner had similar theatre interests in 243 theatres located in 26 cities. In 14 of those cities, or 54% containing 89 theatres, or 37%, there were theatres of other defendants. In an additional 8% of the cities, containing 5% of Warner's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with Warner, both on first and later runs, that competition with Warner was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 19% of these cities competition between Warner and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 19% were located 51% of Warner's theatre interests. And in 19% of the cities, containing 7% of Warner's theatre interests, Warner was the only defendant operating theatres. Thus, it appears that there was little, if any, competition between Warner and any other defendant in 46% of the cities and in respect to 63% of the theatres in which Warner had an interest.

154(c). Loew had similar theatre interests in 144 theatres located in 37 cities. In 32 of those cities, or

POOR COPY
BLEED THROUGH

86%, containing 122 Loew theatres, or 85%, there were theatres of other defendants. In 3% of these cities, competition between Loew and the only other defendant in the city was eliminated by means of a pooling agreement affecting all of their theatres, and in this 3% were located 7% of Loew's theatre interest. And in 11% of the cities, containing 8% of Loew's theatre interests, Loew was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between Loew and any other defendant in 14% of the cities and respect to 15% of the theatres in which Loew had an interest.

154(d). In New York City Loew and RKO divided the neighborhood prior run product of the various defendant distributors under a continuing arrangement so that there was no competition between them in obtaining pictures. On one occasion where Paramount was having a long dispute with Loew's as to rental terms for Paramount films to be shown in Loew's New York neighborhood circuit of theatres, no attempt was made by Paramount to lease its films to RKO for exhibition in the latter's circuit, nor was any effort made by RKO to procure Paramount films as they both evidently preferred to adhere to the existing arrangement, under which Loew's circuit consistently exhibited the films of itself, Paramount, United Artists, Columbia and half of Universal, while RKO exhibited the film, of itself, Fox, Warner, and half of Universal. Accordingly, the showing that 85% of Loew's theatres are in competition with theatres of other defendants is misleading and may properly be reduced by the exclusion of its New York neighborhood theatres. If this is done, it would give Loew a percentage of approximately 42% of its theatres in competition with other defendants in cities over 100,000.

154(e). RKO had similar theatre interests in 256 theatres in 31 cities. In 22 of these cities, or 72%, containing 190 theatres, or 74%, there were theatres of other defendants. In an additional 6% of the cities, containing 4% of RKO's theatre holdings, there were other defendants having theatre interests, but those interests were so relatively small as compared with

RKO, both on first and later runs, that competition with RKO was unsubstantial owing to the dominance which the latter's theatre holdings gave it. In 16% of these cities, competition between RKO and the only other defendants in the city was substantially lessened or eliminated by means of a pooling agreement affecting some or all of their theatres, and in this 16% were located 15% of RKO's theatre interests. And 6% of the cities, containing 7% of RKO's theatre interests, RKO was the only defendant operating theatres. Thus, it appears that there was little, if any, theatre competition between RKO and other defendants in 28% of the cities and in respect to 26% of the theatres in which RKO had an interest.

154(f). Approximately 58% of RKO theatre interests were located in New York on neighborhood runs, and the same comments as to distribution of film made in regard to Loew's are applicable to RKO. If its New York neighborhood theatre interests were excluded from the category of theatres in competition with other defendants, the RKO percentage would then be only about 16% in competition with other defendants.

154(g). The major defendants had interests altogether in 1,112 theatres located in 87 cities of more than 100,000. In 46% of these cities, containing 23% of their theatre interests, only one of the major defendants owned theatres in the area. In 11.5% of the cities, competition between them was substantially lessened or eliminated by means of pooling agreements, and in this 11.5% were located 16% of their theatre holdings. In an additional 11.5% of the cities, containing 17% of their theatre interests, there was more than one defendant having theatre interests in the city, but the position of one defendant was so dominant relative to the others that competition between them was unsubstantial. In 31% of the cities, containing 44% of their theatre interests, there was competition among the defendants. But the New York neighborhoood theatres of Loew and RKO, which are included in reaching the 44% figure, should properly be excluded because there is no competition between Loew and RKO in obtaining pictures for

POOR COPY

BLEED THROUGH

the reasons we have already given. This would reduce the percentage of the defendants' theatres which compete with one another to 27.

154(h). The effect of the geographical distribution in cities having a population of more than 100,000 was substantially to limit competition among the major defendants.

155. Although there was no agreement to divide territory geographically in the original organization of the defendants' theatre circuits, the geographical distribution of theatres among the major defendants became a part of a system in which competition was largely absent and the status of which was intentionally maintained by fixed runs, clearances and prices, by pooling agreements and joint ownerships among the major defendants, and by cross-licensing which made it necessary that they should work together.

156. In the relatively few areas where more than one of the major defendants had theatres, competition for first-run licensing privileges was generally absent because the defendants customarily adhered to a set method in the distribution and playing of their films.

156(a). A study of four seasons between the years 1936 and 1944 shows that during this period the privilege of first-run exhibition of a defendant's films was ordinarily transferred from one defendant to another only as the result of dissolution of a theatre operating pool or an arbitrary division of the product known as a "split".

156(b). Effective relief from the monopoly power of and its exercise by the major defendants cannot be obtained without divorcement. No adequate competition among the defendants or between defendants and independents can exist in the presence of interdependency among the defendants on the one hand to obtain pictures for their own theatres and on the other to obtain theatre outlets for their own pictures. Divorcement is necessary to prevent the major defendants from being in a state of interdependence which too

greatly restricts competition. Divorcement is a necessary remedy to introduce competition into defendants' system of fixed admission prices, clearances and runs, and to remove a major incentive to discriminatory trade practices.

157. The arbitration system and the Appeal Board which has been a part of it have been useful in the past and should be continued upon terms to be settled by the Court.

158. Evidence submitted since the remand of this case has been considered by this Court. Such evidence has been used by the Court in making its findings as to the situation in 1945. The change in status and practices since 1945 revealed by this evidence has been insufficient to warrant a change in the findings and judgment entered herein.

159. A consent judgment was entered on March 3, 1949, against defendants Paramount Pictures Inc. and Paramount Film Distributing Corporation, and neither of these companies nor their counsel appeared or participated in any of the proceedings after the entry of that consent judgment, except that, on April 21, 1949, counsel for these companies presented, and the court made and directed the entry of, an order severing and terminating, as of March 3, 1949, this action as against said defendants.

160. A consent judgment was entered on November 8, 1948, against defendants Radio-Keith-Orpheum Corporation, RKO Radio Pictures, Inc., RKO Proctor Corporation, RKO Midwest Corporation and Keith-Albee-Orpheum Corporation, and none of these companies nor their counsel appeared or participated in any of the proceedings after the entry of that consent judgment, except that on January 18, 1950, counsel for these companies presented, and the court made and directed the entry of, an order styled United States v. Radio-Keith-Orpheum Corporation, et al. severing and terminating, as of November 8, 1948, this action as against said defendants.

POOR COPY

Conclusions of Law

1. The Court has jurisdiction of this cause under the provisions of the act of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", hereinafter referred to as the Sherman Act.

2. Universal Pictures Company, Inc., and Screen Gems, Inc. have not violated the Sherman Act and should be dismissed as defendants herein.

3. None of the defendants herein has violated the Sherman Act by monopolizing or attempting to monopolize or conspiring to monopolize the production of motion picture films.

4. The consent decree entered herein on November 20, 1940 does not foreclose enforcement in this suit at this time of any rights or remedies which the plaintiff may have against any of the defendants by virtue of violations of the Sherman Act by them, except such acts as were in accord with such decree during the period it was in force.

5. None of the defendants herein has violated the Sherman Act by combining, conspiring or contracting to restrain trade in any part of the business of producing motion pictures or by monopolizing, attempting to monopolize, or conspiring to monopolize such business.

6. The defendants, and each of them are entitled to judgment dismissing all claims of the plaintiff based upon their acts as producers, whether as individuals or in conjunction with others.

7. The defendants Loew's Incorporated; Warner Bros. Pictures Inc.; Warner Bros. Pictures Distributing Corporation, (formerly known as Vitagraph, Inc.); Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; National Theatres Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation have un-

reasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act by:

(a) Acquiescing in the establishment of a price fixing system by conspiring with one another and with Paramount and RKO to maintain theatre admission prices;

(b) By conspiring with one another and with Paramount and RKO to restrict competition for theatre patronage with each other and with independents through a system of admission price fixing

(c) Conspiring with each other and with Paramount and RKO to maintain a nation-wide system of runs and clearances which is substantially uniform in each local competitive area;

(d) Fixing, together with Paramount and RKO, a system of runs and clearances which prevented effective competition by outsiders and which was designed to protect the theatre holdings of the major defendants and to safeguard the revenue therefrom.

8. The distributor-defendants Loew's, Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation (formerly known as Vitagraph, Inc.); Twentieth Century-Fox Film Corporation; Columbia Pictures Corporation; Columbia Pictures of Louisiana, Inc.; Universal Corporation; Universal Film Exchanges, Inc.; Big U Film Exchange, Inc.; and United Artists Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures and attempted to monopolize such trade and commerce, both before and after the entry of said consent decree, in violation of the Sherman Act, by:

(a) Conspiring with each other and with Paramount and RKO to maintain a nation-wide system

POOR COPY

of fixed minimum motion picture theatre admission prices;

(b) Agreeing individually with their respective licensees to fix minimum motion picture theatre admission prices;

(c) Conspiring with each other and with Paramount and RKO to maintain a nation-wide system of runs and clearances which is substantially uniform as to each local competitive area;

(d) Agreeing individually with their respective licensees to grant discriminatory license privileges to theatres affiliated with other defendants and with large circuits as found in Finding 110 above;

(e) Agreeing individually with such licensees to grant unreasonable clearance against theatres operated by their competitors;

(f) Making master agreements and franchises with such licensees;

(g) Individually conditioning the offer of a license for one or more copyrighted films upon the acceptance by the licensee of one or more other copyrighted films, except in the case of the United Artists Corporation;

9. The exhibitor-defendants Loew's Incorporated; Warner Bros. Pictures, Inc.; Warner Bros. Circuit Management Corporation; Twentieth Century-Fox Film Corporation; and National Theatres Corporation, have unreasonably restrained trade and commerce in the distribution and exhibition of motion pictures both before and after the entry of said consent decree in violation of the Sherman Act by:

(a) Jointly operating motion picture theatres with each other, with Paramount and RKO, and with independents through operating agreements or profit-sharing leases;

(b) Jointly owning motion picture theatres with each other, with Paramount and RKO, and with

independents through stock interests in theatre buildings;

(c) Conspiring with each other, with the distributor-defendants named in Paragraph 8 above, and with Paramount and RKO, to fix substantially uniform minimum motion picture theatre admission prices, runs, and clearances;

(d) Conspiring with the distributor-defendants named in Paragraph 8 above and with Paramount and RKO to discriminate against independent competitors in fixing minimum admission price, run, clearance, and other license terms.

10. The formula deals, master agreements and franchises referred to in Findings 86, 88, and 89 have tended to restrain trade and violate Section 1 of the Sherman Act.

11. Block-booking, as hereinabove defined, violates the Sherman Act.

12. As an aid to the conspiracy to fix prices, runs, and clearances hereinabove described, and as a means for carrying out such conspiracy, the maintenance of vertical integration by the major defendants named in Paragraph 7 above has violated the Sherman Act and effected a situation where the creation of competition requires dissolution of these vertical integrations.

13. The collective monopoly power of the defendants named in Paragraph 7 above (taken together with Paramount and RKO) to exclude competitors from first run coupled with their intent to exercise this power violated Section 2 of the Sherman Act.

14. Their use of this power to actually exclude independents from the first run market and to restrict the distribution of pictures to independents violated Sections 1 and 2 of the Sherman Act.

15. The power of the defendants named in Paragraph 7 above to fix runs and clearances when exercised by the major defendants named in Paragraph 7

POOR COPY

above to exclude independent competitors violated the Sherman Act.

16. Loew's Incorporated, has violated the Sherman Act by conspiring with RKO to monopolize and monopolizing the first neighborhood run in New York City, and by the dividing of that market between itself and RKO.

17. Further conclusions of law are made and embodied in the decree filed herewith.

Dated: February 8, 1950.

AUGUSTUS N. HAND,
United States Circuit Judge.
HENRY W. GODDARD,
United States District Judge.
ALFRED C. COXE,
United States District Judge.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1950 669472 724

No. 844. LOEW'S, INC. *v.* UNITED STATES;

No. 845. WARNER BROS. PICTURES, INC. ET AL. *v.* UNITED STATES;

No. 846. TWENTIETH CENTURY-FOX FILM CORP. ET AL. *v.* UNITED STATES; and

No. 847. UNITED STATES *v.* LOEW'S, INC. ET AL. Appeals from the United States District Court for the Southern District of New York. *Per Curiam:* The judgment is affirmed. MR. JUSTICE REED and MR. JUSTICE BURTON are of the opinion that probable jurisdiction should be noted and the cases set down for argument. MR. JUSTICE JACKSON and MR. JUSTICE CLARK took no part in the consideration or decision of these cases. *John W. Davis, J. Robert Rubin* and *S. Hazard Gillespie, Jr.* for appellant in No. 844. *Joseph M. Proskauer* and *Robert W. Perkins* for Warner Bros. Pictures, Inc. et al., appellants in No. 845. *James F. Byrnes, Otto E. Koegel, John F. Caskey* and *Frederick W. R. Pride* for Twentieth Century-Fox Film Corp. et al., appellants in No. 846. *Solicitor General Perlman* for the United States, appellant in No. 847. Reported below: See 70 F. Supp. 53.